

1 substantial monthly amounts contemplated by the Swap Agreement Documents to  
2 correspond to its capital needs. Its goal of being able to use up to \$50 million of the  
3 Cogent Capital Defendants' bonds to grow its business aggressively has been  
4 thwarted completely and made impossible.

5 48. The Cogent Parties have refused to budge. Left with no choice, and  
6 with additional interest payments coming due each month, Innofone has  
7 commenced this action as a last resort. This complaint constitutes Innofone's  
8 notice to rescind the Swap Agreement Documents and all ancillary or related  
9 documents.

10 **FIRST CLAIM FOR RELIEF**

11 **Violation of Section 10(b) of the Securities Exchange Act and Securities and**  
12 **Exchange Commission Rule 10b-5 Promulgated Thereunder**  
13 **Against Cogent Capital Financial, LLC, Cogent Capital Investments, LLC,**  
14 **Cogent Capital Group, LLC, Kofford, and Holden**

15 49. Plaintiff Innofone incorporates by this reference and realleges  
16 Paragraphs 1-48 as if fully set forth here.

17 50. In May, June, and November, 2006, Innofone and the Cogent Capital  
18 Defendants executed the Swap Agreement Documents. The structure of the  
19 transaction was controlled in all material respects by the Cogent Capital  
20 Defendants.

21 51. During the month of May 2006, while they were negotiating the terms  
22 of the equity swap underlying the Swap Agreement Documents, both Kofford and  
23 Holden, acting on behalf of the Cogent Capital Defendants, as well as themselves,  
24 represented to Innofone that the Securities and Exchange Commission had  
25 approved this type of financing before, and thus it would not be a problem to get  
26 the Securities and Exchange Commission to approve this transaction. Kofford and  
27 Holden, acting on behalf of the Cogent Capital Defendants, as well as themselves,  
28 further represented to Innofone that the transaction structure they proposed was

1 specifically designed to meet the requirements of the Securities and Exchange  
2 Commission. In this regard, they stressed that they had inside information from the  
3 Securities and Exchange Commission on how to structure the deal so that it would  
4 be approved.

5 52. These statements were material statements of fact to Innofone.  
6 Innofone could only access the United States Treasury bonds if they could register  
7 the shares to be issued to the Cogent Capital Defendants.

8 53. At the time the Cogent Parties made these statements, they knew that  
9 they were false. In this regard, the Securities and Exchange Commission has not  
10 approved a transaction of the type proposed by the Cogent Parties, and the  
11 statements by the Cogent Parties to the contrary showed a high degree of  
12 recklessness which is the equivalent of intent. Moreover, as the numerous  
13 rejections of Innofone's registration statement have made clear, the deal was not  
14 structured to meet the requirements of the Securities and Exchange Commission.  
15 The Cogent Parties' subsequent attempts to assist Innofone obtain registration make  
16 clear that they knew all along that the structure was anything but a sure bet before  
17 the Securities and Exchange Commission. Indeed, in a series of emails sent in  
18 December 2006, the Cogent Parties admitted that none of their other similar  
19 investments had ever successfully registered their shares with the Securities and  
20 Exchange Commission.

21 54. Innofone reasonably and justifiably relied on the Cogent Parties'  
22 statements. Those statements caused Innofone to agree to enter into the transaction.

23 55. The Cogent Parties' statements and conduct caused Innofone damage  
24 because, *inter alia*, 1) the failure to obtain registration of the Innofone common  
25 stock damaged Innofone; and 2) Innofone was not able to pursue alternative  
26 financing statements. Innofone reasonably estimates it has been damaged in an  
27 amount in excess of \$25 million, subject to proof at trial.  
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**SECOND CLAIM FOR RELIEF**

**Rescission of Swap Agreement Documents Based on Illegality  
Against Cogent Capital Financial, LLC, Cogent Capital Investments, LLC,  
Cogent Capital Group, LLC, Kofford, Holden, and Investors Bank & Trust  
Company**

56. Plaintiff Innofone incorporates by this reference and realleges Paragraphs 1-48 as if fully set forth here.

57. In May, June, and November, 2006, Innofone and the Cogent Capital Defendants executed the Swap Agreement Documents. Those documents explicitly contemplated that the shares issued by Innofone to Cogent Capital Financial would be registered with the Securities and Exchange Commission, and that after that registration was declared effective, Innofone would be able to commence the draw-down period on the \$50 million in bonds. Without the ability to draw on the bonds, the very object of the Swap Agreement Documents has been defeated because there is simply no way for Innofone to obtain the benefit of its bargain.

58. Over the past nine months, despite repeated attempts by Innofone, assisted by the Cogent Parties, the Securities and Exchange Commission has repeatedly and emphatically refused to allow Innofone to declare its registration statement effective. In this regard, the Securities and Exchange Commission has raised objections not only to the disclosures proposed, but to the underlying integrity and structure of the transaction. In effect, the actions of the Securities and Exchange Commission must be interpreted as amounting to a finding that the transaction violates Securities and Exchange Commission rules.

59. In fact, it would be illegal for the Cogent Parties to offer the securities for sale to the public without an effective registration statement. The Securities and Exchange Commission would likely sue to enjoin the offering of these shares to the public, and might seek further sanctions against Innofone or the Cogent Parties.

1           60. Innofone is therefore entitled to rescind and hereby rescinds the  
2 transaction with the Cogent Capital Defendants in their entirety and is further  
3 entitled to restitution of all monies paid to defendants because, as structured,  
4 contemplated and described by the Swap Agreement Documents, the transaction is  
5 illegal. Innofone offers to return to the Cogent Capital Defendants the Treasury  
6 bonds they placed in escrow. After the most recent Securities and Exchange  
7 Commission rejection of Innofone's proposed registration of the common stock  
8 issued to Cogent Capital Financial, and after attempts to resolve this matter  
9 amicably failed, Innofone acted without unreasonable delay to seek rescission.

10           61. Additionally, Innofone requests the Court to enjoin the Cogent Parties  
11 from taking any steps to effect a distribution of any of the collateral placed in  
12 escrow and more particularly described in the June 2, 2006 Escrow Agreement  
13 (attached as Exhibit F) with Investors Bank & Trust Company in connection with  
14 this transaction. Similarly, Innofone also requests that Investors Bank & Trust be  
15 enjoined during the pendency of this action from distributing any of the collateral in  
16 escrow and under its control until judgment is entered.

17           62. Innofone has no adequate remedy at law.  
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19                           **THIRD CLAIM FOR RELIEF**

20                   **Rescission of Swap Agreements Based on Fraud or Mistake**  
21           **Against Cogent Capital Financial, LLC, Cogent Capital Investments, LLC,**  
22                   **Cogent Capital Group, LLC, Kofford, Holden, and**  
23                   **Investors Bank & Trust Company**

24           63. Plaintiff Innofone incorporates by this reference and realleges  
25 Paragraphs 1-48 and 56-62 as if fully set forth here.

26           64. In May, June, and November, 2006, Innofone and the Cogent Capital  
27 Defendants executed the Swap Agreement Documents. Those documents  
28 memorialized a transaction which the Cogent Parties represented as being a

1 financially viable securities transaction. The transaction explicitly contemplated  
2 that the shares issued by Innofone to Cogent Capital Financial would be registered  
3 with the Securities and Exchange Commission, and that after that registration was  
4 declared effective, Innofone would be able to draw down on the \$50 million in  
5 bonds. Without the ability to draw on the bonds, the very object and purpose of the  
6 Swap Agreement Documents for Innofone has been defeated because there is  
7 simply no way for Innofone to obtain the benefit of its bargain. Thus, the parties  
8 believed that the transaction contemplated by the Swap Agreement Documents was  
9 a viable financing arrangement which complied with Securities and Exchange  
10 Commission rules and of a type previously approved by it. As events unfolded, this  
11 was a material mistake of fact on the part of both Innofone and the Cogent Parties.  
12 The parties further believed that the Securities and Exchange Commission's  
13 approval of the registration of the Innofone securities would occur quickly, which  
14 was another mistaken material fact and an underlying premise to the Swap  
15 Agreement Documents and the overall transactions contemplated thereby.

16 65. Over the past nine months, despite repeated attempts by Innofone,  
17 assisted by the Cogent Parties, the Securities and Exchange Commission has  
18 repeatedly and emphatically refused to allow Innofone to declare its registration  
19 statement effective. Most importantly, the Securities and Exchange Commission  
20 has raised objections not only to the disclosures proposed, but has raised serious  
21 questions about the underlying structure and integrity of the transaction and its  
22 viability as a securities transaction.

23 66. In order to induce Innofone to enter into the Swap Agreement  
24 Documents, the Cogent Parties repeatedly informed and assured Innofone that the  
25 transaction was a viable securities transaction of a type previously approved and  
26 which complied with Securities and Exchange Commission rules and that  
27 registration of the Innofone securities would not present any problems whatsoever.  
28 Thus, at best, all of the parties to the Swap Agreement Documents mistakenly

1 believed in the inherent viability of the transaction and that the Securities and  
2 Exchange Commission would allow registration of the securities to become  
3 effective quickly.

4 67. Alternatively, if the Cogent Capital Defendants had no basis to believe  
5 that the transaction itself was viable, or that such a transaction had been previously  
6 approved, or the registration of the Innofone securities would or could occur in a  
7 timely manner, if at all, then they fraudulently induced Innofone to enter into the  
8 Swap Agreement Documents by their misrepresentations, which Innofone  
9 reasonably relied on to its detriment.

10 68. Innofone is therefore entitled to rescind and hereby rescinds the  
11 transaction with the Cogent Capital Defendants in their entirety and is further  
12 entitled to restitution of all monies paid to defendants. Innofone offers to return to  
13 the Cogent Parties the Treasury bonds they placed in escrow. After the most recent  
14 rejection, and after attempts to resolve this matter amicably failed, Innofone acted  
15 without unreasonable delay to seek rescission.

16 69. Additionally, Innofone requests the Court to enjoin the Cogent Parties  
17 from taking any steps to effect a distribution of any of the collateral placed in  
18 escrow and more particularly described in the June 2, 2006 Escrow Agreement  
19 (attached as Exhibit F) with Investors Bank & Trust Company in connection with  
20 this transaction. Similarly, Innofone also requests that Investors Bank & Trust be  
21 enjoined during the pendency of this action from distributing any of the collateral in  
22 escrow and under its control until judgment is entered.

23 70. Innofone has no adequate remedy at law.  
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**FOURTH CLAIM FOR RELIEF**

**Negligent Misrepresentation**

**Against Cogent Capital Financial, LLC, Cogent Capital Investments, LLC,  
Cogent Capital Group, LLC, Kofford, and Holden**

71. Plaintiff Innofone incorporates by this reference and realleges Paragraphs 1-48 and 56-70 as if fully set forth here.

72. In May, June, and November, 2006, Innofone and the Cogent Capital Defendants executed the Swap Agreement Documents. Those documents memorialized a transaction which the Cogent Parties represented as being a financially viable securities transaction of a type previously approved and which complied with Securities and Exchange Commission rules. The transaction explicitly contemplated that the shares issued by Innofone to Cogent Capital Financial would be registered with the Securities and Exchange Commission, and that after that registration was declared effective, Innofone would be able to draw down on the \$50 million in bonds so it could use them to expand its business. Without the ability to draw on the bonds, the very object of the Swap Agreement Documents has been defeated because there is simply no way for Innofone to obtain the benefit of its bargain. Thus, the viability of the transaction, and the subsequent approval by the Securities and Exchange Commission, were material facts underlying the Swap Agreement Documents and the transaction contemplated thereby.

73. In order to induce Innofone to enter into the Swap Agreement Documents, the Cogent Capital Defendants, by and through their representatives, Kofford and Holden, repeatedly, carelessly, and with reckless disregard for the truth informed Innofone the transaction was a previously approved and viable securities transaction whereby Innofone could obtain the substantial capital funding it needed, and that registration of the Innofone securities would occur swiftly. The Cogent Capital Defendants, Kofford, and Holden, knew that they had no basis to make

1 these representations since they had never undertaken a transaction similar in scope,  
2 size or complexity.

3 74. By virtue of their superior knowledge and experience in financial  
4 transactions, which they repeatedly touted to Innofone, both orally and on the  
5 Cogent Capital Web Site, the Cogent Capital Defendants, Kofford, and Holden,  
6 were bound by a relation or duty of care to Innofone when making these statements.

7 75. Innofone reasonably and justifiably relied on these representations in  
8 making its decision about whether to enter into the transaction and whether to  
9 execute the Swap Agreement Documents.

10 76. Over the past nine months, despite repeated attempts by Innofone,  
11 assisted by the Cogent Parties, the Securities and Exchange Commission has  
12 repeatedly and emphatically refused to allow Innofone to declare its registration  
13 statement effective. In this regard, the Securities and Exchange Commission has  
14 raised objections not only to the disclosures proposed, but has questioned the  
15 underlying structure and integrity of the transaction.

16 77. As a proximate result of its reliance on the misrepresentations of the  
17 Cogent Capital Defendants, Kofford, and Holden, Innofone has been damaged in an  
18 amount to be proven at trial but exceeding \$25 million. Such damages include but  
19 are not limited to all sums previously paid to the Cogent Parties, interest on such  
20 sums, lost funding opportunities caused by the reliance, and consequent delay,  
21 arising from the Cogent transaction, as well as all associated costs related to  
22 Innofone's attempts to obtain an effective registration statement for a  
23 fundamentally flawed transaction.

**FIFTH CLAIM FOR RELIEF**

**Declaratory Relief Pursuant to 28 U.S.C. § 2201**

**Against Cogent Capital Financial, LLC, Cogent Capital Investments, LLC,  
And Cogent Capital Group, LLC**

78. Plaintiff Innofone incorporates by this reference and realleges Paragraphs 1-48 and 56-77 as if fully set forth here.

79. There is a substantial controversy, between Innofone and the Cogent Parties regarding the validity and enforceability of the Swap Agreement Documents. In this regard, Innofone has informed the Cogent Capital Defendants that, looking beyond the issue of whether the Cogent Capital Defendants are at fault in proposing a fundamentally flawed securities transaction, the refusal by the Securities and Exchange Commission to approve registration of the Innofone common stock at issue makes it impossible for the transaction to be completed in the manner contemplated by the parties, and amounts to a failure of consideration. Moreover, based on the Securities and Exchange Commission's repeated refusals to approve the registration of the shares at issue, it is impossible for the parties to complete the transaction as contemplated.

80. The Cogent Capital Defendants emphatically disagree, and continue to demand that Innofone pay Cogent Capital Financial monthly interest on \$50 million even though Innofone has no realistic chance of ever accessing this money on the terms set forth in the Swap Agreement Documents.

81. Innofone and the Cogent Capital Defendants have adverse legal interests. The Cogent Capital Defendants wish to continue to receive monthly interest without ever having to risk any of their own capital and therefore contend the transaction should continue. Innofone wishes to terminate this situation immediately because it has received not one iota of benefit from the transaction.

82. This dispute is of sufficient immediacy and reality to warrant the issuance of declaratory relief. Should Innofone fail to pay monthly interest in the

1 manner contemplated by the Swap Agreement Documents, Cogent Capital  
2 Financial likely will declare a default and begin the process of selling the  
3 underlying collateral.

4 83. Innofone has no adequate remedy at law.

5 84. Innofone therefore seeks a judicial declaration that

6 A. The Swap Agreement Documents and the transaction  
7 contemplated thereby are impossible to consummate and therefore are invalid and  
8 unenforceable;

9 B. The Swap Agreement Documents and the transaction  
10 contemplated thereby are illegal, or otherwise procured by fraud or mutual  
11 mistake, and therefore are invalid and unenforceable;

12 C. The Swap Agreement Documents and the transaction  
13 contemplated thereby fail for lack of consideration because Innofone has not  
14 received any benefit from the transaction;

15 D. Defendants have no power to compel Innofone to perform  
16 under the Swap Agreement Documents, including paying monthly interest; and

17 E. The parties must return all of the consideration they have  
18 received as part of the Swap Agreement Documents and the transactions  
19 contemplated thereby.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, plaintiff Innofone prays that judgment be entered in its favor  
22 against each of the defendants as follows:

23 (i) rescinding the Swap Agreement Documents, to wit

24 A. The May 5, 2006 Letter Agreement

25 B. The Securities Purchase Agreement

26 C. The Escrow Agreement

27 D. The Master Agreement, including the Schedule thereto,

28 E. The Equity Swap Confirmation

- 1 F. The Credit Support Annex  
2 G. The Registration Rights Agreement;  
3 H. The Warrant; and  
4 I. The November Confirmations; and all ancillary or related  
5 agreements or arrangements.  
6 (ii) declaring, pursuant to 28 U.S.C. § 2201 (2000), that Innofone has no  
7 further obligations to defendants under  
8 A. the May 5, 2006 Letter Agreement  
9 B. the Securities Purchase Agreement  
10 C. the Escrow Agreement  
11 D. The Master Agreement, including the Schedule thereto,  
12 E. The Equity Swap Confirmation  
13 F. The Credit Support Annex  
14 G. The Registration Rights Agreement;  
15 H. Innofone's certificate of designation of its Series A convertible  
16 preferred shares;  
17 I. The Warrant;  
18 J. The November Confirmations; and  
19 K. All ancillary or related agreements and arrangements.  
20 (iii) the restitution of all consideration paid or property transferred by the  
21 parties pursuant to the Swap Agreement Documents, and all ancillary or related  
22 agreements or arrangements, including by way of illustration all of the property  
23 held in escrow pursuant to the Escrow Agreement;  
24 (iv) enjoining the Cogent Parties and Investors Bank & Trust Company  
25 from distributing any of the property held in escrow;  
26 (v) awarding damages in an amount reasonably estimated to be \$25  
27 million exclusive of interest and costs, subject to proof at trial;  
28

1 (vi) awarding Innofone its fees and costs, including its attorneys' fees,  
2 pursuant to the Swap Agreement Documents or in accordance with law;  
3 (vii) granting Innofone such other and further relief as this Court deems just  
4 and proper.  
5

6 **DEMAND FOR JURY TRIAL**

7 Pursuant to Fed. R. Civ. P. 38, 39, and 57, Innofone hereby demands a trial  
8 by jury of all issues triable of right by a jury.  
9

10 Dated: March 19, 2007

JONES DAY

11 By:   
12 Roderick A. McLeod

13 Attorneys for Plaintiff  
14 INNOFONE.COM, INCORPORATED

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